

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 2667 OF 2016

M/s. N. S. Exports

... Petitioner

vs.

M/s. Manibhadra Enterprises & ors.

... Respondents

Mr. C. K. Pendse i/by Mr. Milind Dhande, Advocate for the petitioner.

Mr. Rajesh Khobragade, Advocate for respondents no.1 and 2.

Mr. V. B. Konde Deshmukh, A.P.P. for respondent no.3/State.

Coram : Smt. R. P. SondurBaldota, J.

Date : 9th March, 2017

P.C. :

1. Mr. Khobragade, the learned advocate states that he has instructions to appear for respondents no.1 and 2. He undertakes to file appearance on their behalf.

2. The relief at prayer clause (a) sought in this petition is of expeditious disposal of C.C. No. 1315/SS/2011 by the Court of Metropolitan Magistrate, 28th Court, Esplanade, Mumbai. By prayer clause 'b', the petitioner seeks direction to the Trial Court to proceed with the matter from the stage of further cross-examination of PW-1. Since the respondents have already filed an application for conducting of the trial de-novo, which application is pending, Mr. Pendse, the learned advocate for the petitioner makes a statement that the petitioner restricts the present petition to the first prayer for expeditious hearing.

3. Mr. Pendse submits that the respondents appeared before the Trial Court on 20th February, 2012 and their plea was recorded on the same date. Thereafter on 14th March, 2012 the petitioner filed affidavit of examination-in-chief and matter was

fixed for say of the respondents on the documents filed by the petitioner and for cross-examination. On 6th October, 2012 the petitioner filed additional affidavit along with additional documents and his cross-examination commenced on 14th March, 2013. On 25th June, 2013 as the respondents remained absent, the Trial Court passed "No cross" order and issued Non-bailable warrant against respondent no.2. Thereafter on 20th August, 2013 respondent no.2 appeared before the Trial Court, applied for cancellation of warrant and recalling of the witness for further cross-examination. Though the application was allowed the respondents failed to cross-examine the petitioner till date. In the interregnum twice Non-bailable warrants had to be issued against respondent no.2 and subsequently stayed. In these circumstances, Mr. Pendse submits that it is high time that the delaying tactics of the respondent are controlled by giving direction to the Trial Court to expeditiously decide the trial. All the above statements of the petitioner are borne out by the records and proceedings. Mr. Khobragade submits per contra that the respondents are within their rights to file the application for de-novo trial in view of the change in the officer presiding over the Court.

4. As has been pointed out by Mr. Pendse, one identical application by the respondents filed earlier has failed. In any case there are other acts of the respondents which have contributed to the delay. The Trial Court has to issue Non-bailable warrants against the respondents to secure their presence. In the circumstances, the request for expeditious hearing is justified. Hence, the petition is allowed in terms of prayer clause 'a'.

[Smt. R. P. SondurBaldota, J.]